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EXAMINER

SPAHN, GAY

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 04/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/633,046

Applicant(s)

WHEELER ET AL.

Examiner

Gay Ann Spahn

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 14-22, 24-30, and 36-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 14-22, 24-30 and 36-42 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 1 August 2003 and 19 November 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Allowable Subject Matter

The indicated allowability of claims 11-13, 24, and 30 (as indicated in the previous Office Action made final and mailed January 27, 2005) is withdrawn. The finality of the previous Office Action mailed on January 27, 2005 is withdrawn and rejections based on some references of record and on some new references follow below.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "roller thrust bearing" (claim 42 and page 9, line 15) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement

sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

More particularly, if Fig. 3A added on by replacement sheet included with the "Response To Office Action Dated July 16, 2004" filed on November 19, 2004 is intended to represent the embodiment of the invention described in the specification on page 9, lines 13-18 (or page 9, paragraph no. [0022], lines 7-12), then Applicant must disclose such by adding a description of the figure in the Brief Description of the Drawings section and also amending the Detailed Description of the Preferred Embodiment in paragraph no. [0022] to add that the subject matter described therein is shown in Fig. 3A and to disclose what reference numeral 30A represents.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 30A in Fig. 3A. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet,

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even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

See examiner's above discussion with respect to applicants' addition of Fig. 3A having reference numeral 30A therein (added by replacement sheet with Response filed on November 19, 2004).

Specification

The disclosure is objected to because of the following informalities: there is no description of Figure 3A in the Brief Description of the Drawings section and in the Detailed Description of the Preferred Embodiment section. See examiner's above discussion with respect to applicants' addition of Fig. 3A having reference numeral 30A therein (added by replacement sheet with Response filed on November 19, 2004).

Appropriate correction is required.

The use of the trademark Teflon® (page 8, lines 24, 25, 27 and 31 and page 9, lines 2, 3, and 15) has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Objections

Claim 9 is objected to because of the following informalities: (1) line 2, the phrase "comprises a an angled slot" has a typographical error therein and the examiner suggests taking out the word "a" after "comprises"; and (2) in line 3, the word "caming" is misspelled and should be changed to --camming--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 16, 17, and 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 16, line 2, there is no antecedent basis for the term "the first member". Claim 16 is directly dependent upon claim 15 which recites an upper member and a lower member. Therefore, the examiner suggests that "the first member" be changed to --the lower member--.

Claim 17, lines 1 and 2, there is no antecedent basis for "the first member" and "the second member," respectively. Claim 17 is indirectly dependent upon claim 15

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which recites an upper member and a lower member. Therefore, the examiner suggests that "the first member" be changed to --the lower member-- and "the second member" be changed to --the upper member--.

Claim 28, line 2, there is no antecedent basis for "the joint". Claim 28 is directly dependent upon claim 25 which recites does not recite a joint. Therefore, the examiner suggests that "wherein the joint comprises" be changed to --further comprising a joint which is comprised of-- or similar language.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1-3, 5, 6, 8, 9, 25, 26, 28, 36, 37, and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by Mazon.

Please note that Mazon has a number of labeling errors therein. In particular, the reference numeral "22" was used to represent two different structural elements, namely, reference numeral "22" in Figs. 1-5 of Mazon (called locking sleeve therein) is what the examiner is calling the collar and reference numeral "22" in Fig. 6 of Mazon (also shown in Fig. 4 as plates adjacent bolt heads and on either side of rectangular tube extending from portion 12 of elongated handle) is what the examiner is calling the housing.

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As to claim 1, Mazon discloses a tamper tool assembly having a pivoting handle assembly (38, 12), the tamper tool assembly comprising:

an elongate handle (38, 12) having a collar (22 shown in Figs. 1-3 and 5) attached to a distal end;

a tamping base (32) having an upper surface and a lower surface: and

a housing member (22 shown in Fig. 6) disposed on the upper surface of the tamping base (32), wherein the housing member (22 of Fig. 6) includes at least two clamping surfaces (top and right surface of 22 in Fig. 6) formed 90 degrees apart, the at least two clamping surfaces each matable with the collar (22 of Figs. 1-3 and 5) to retain the handle (38, 12) in a first or second position relative to the base (32).

The claim language recites that the at least two clamping surfaces of the housing are each "matable with" (not positively reciting clamping surfaces are "mated with") the collar. Mazon clearly shows a collar (22 in Figs. 1-3 and 5 and unnumbered but partially shown in Fig. 6 as being adjacent 34) which is capable of being mated with the top surface of the housing (22 in Fig. 6) even though Mazon fails to explicitly disclose that the collar (22 of Figs. 1-3 and 5) is mated against the top surface of the housing (22 in Fig. 6).

In col. 4, lines 16-20, Mazon discloses, as follows:

The pivotable extending arm **34** serves to position the shovel **26** at different angles. In the preferred embodiment, the number of angles positionable by the pivotable extending arm is three, but not be limited by this number.

Mazon further states at col. 5, line 16, that the tool "can be rotated into three different working positions."

Figs. 2 and 3 clearly illustrate two of the three positions into which the tool can be rotated (Fig. 2 is when the bottom surface of the collar is mated with the left surface of the housing (22 of Fig. 6) and Fig. 3 is when the bottom surface of the collar is mated with the right surface of housing (22 of Fig. 6)), but the specification and drawings do not explicitly state what the third position is. However, one of ordinary skill in the art would clearly understand that the third position of the tool is somewhere in between the positions shown in Figs 2 and 3 and that it is implied or suggested that the third position is most likely to be where the tamping base (32) is at a 90 degree angle from the longitudinal axis of the handle since that would be the case if the bottom surface of the collar (unnumbered in Fig. 6, but a portion of which is shown therein adjacent rectangular tube (34) which extends from the end of handle part (12)) were in contact with the top of housing (22 shown in Fig. 6).

Therefore, as broadly recited (i.e., "wherein the housing member includes at least two clamping surfaces formed 90 degrees apart, the at least two clamping surfaces each matable with the collar"), Mazon fully meets the claim recitations.

Applicant argues that Mazon does not explicitly or impliedly disclose a tamping tool and that if Mazon's tool were to be used as a tamper, the sieve holes (36) in the face portion (32) of the tamper tool would prevent effective tamping.

The examiner notes that it does not matter whether Mazon explicitly or impliedly discloses a tamping tool, but rather what is important is that Mazon's tool is fully capable of use as a tamping tool. Mazon's tool would be most effective as a tamping tool if its tamping base (32) were positioned to as to be perpendicular to the handle (38,

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12), but even in the position shown in Figs. 1 and 2 (i.e., tamping base (32) parallel to handle (38, 12)), the tool is capable of use as a tamping tool.

Further, with respect to Applicants' arguments that the sieve holes (36) would make Mazon's tool an ineffective tamper, the examiner replies that although the sieve holes (36) in the face portion (32) might not make Mazon's tool the best tamper, the test is whether it could perform the tamping function at all and the examiner deems Mazon to be capable of performing tamping.

As to claim 2, Mazon discloses the tamper tool assembly of claim 1 as discussed above and Mazon also discloses that the collar (22 of Figs. 1-3 and 5) is threadably attached (see Fig. 5) to the distal end of the elongated handle (38, 12).

As to claim 3, Mazon discloses the tamper tool assembly of claim 1 as discussed above and Mazon also discloses that the handle (38, 12) can pivot between an operational position and a storage position (Fig. 3).

As to claim 5, Mazon discloses the tamper tool assembly of claim 3 as discussed above and Mazon also discloses that the storage position (Fig. 3) comprises the longitudinal axis of the handle (38, 12) being oriented substantially parallel to the lower surface of the tamping base (32).

As to claim 6, Mazon discloses the tamper tool assembly of claim 1 as discussed above and Mazon also discloses that the housing member (22 of Fig. 6) is disposed substantially in the center of the tamping base (32). The housing member (22 of Fig. 6) is positioned along the centerline of the upper end (28) of the tamping base (32) and thus, it can be interpreted to be "in the center of the tamping base" as broadly recited.

As to claim 8, Mazon discloses the tamper tool assembly of claim 1 as discussed above and Mazon also discloses a joint having a pivot bolt (see Fig. 4) disposed through the housing member (22 of Fig. 6) and the distal end of the handle (38, 12).

As to claim 9, Mazon discloses the tamper tool assembly of claim 8 as discussed above and Mazon also discloses that the handle (38, 12) further comprises an angled slot formed on the distal end thereof for receiving the pivot bolt (see Fig. 4) and for camming the handle (38, 12) against an inner wall of the housing member (22 of Fig. 6).

As to claim 25, Mazon discloses a tamper tool assembly having a pivoting handle (38, 12), the tamper tool assembly comprising:

- an elongated handle (38, 12) having a collar (22 of Figs. 1-3 and 5) threadably attached (see Fig. 5) to a distal end;

- a tamping base (32) having an upper surface and a lower surface; and

- a housing member (22 of Fig. 6) disposed substantially in the center of the upper surface of the tamping base, wherein the housing member (22 of Fig. 6) includes at least two clamping surfaces (top and right surfaces of 22 of Fig. 6) formed 90 degrees apart, the at least two clamping surfaces each matable with the collar (22 of Figs. 1-3 and 5) to retain the handle (38, 12) in a first or second position relative to the base (32).

As discussed above with respect to claim 1 and as broadly recited (i.e., "wherein the housing member includes at least two clamping surfaces formed 90 degrees apart, the at least two clamping surfaces each matable with the collar"), Mazon fully meets the claim recitations.

Further, Mazon's housing member (22 of Fig. 6) is positioned along the centerline of the upper end (28) of the tamping base (32) and thus, it can be interpreted to be "in the center of the tamping base" as broadly recited.

As to claim 26, Mazon discloses the tamper tool assembly of claim 25 as discussed above and Mazon also discloses that the handle (38, 12) can pivot between an operational position and a storage position (Fig. 3).

As to claim 28, Mazon discloses the tamper tool assembly of claim 25 as discussed above and Mazon also discloses a joint (see Fig. 4) comprising a pivot bolt disposed through the housing member (22 of Fig. 6) and the distal end of the handle (38, 12).

As to claim 36, Mazon discloses a tamper tool assembly having a pivoting handle (38, 12) assembly, the tamper tool assembly comprising:

- an elongated handle (38, 12) having an engagement means (22 of Figs. 1-3 and 5) disposed at a distal end;

- a tamping base (32) having an upper surface and a lower surface; and

- a housing member (22 of Fig. 6) disposed on the upper surface of the tamping base (32), wherein the housing member (22 of Fig. 6) includes at least two clamping surfaces (top and right surface of 22 of Fig. 6) formed 90 degrees apart and a joint (22 of Fig. 6) configured to pivotally receive the elongated handle (38, 12).

As to claim 37, Mazon discloses the tamper tool assembly of claim 36 as discussed above and Mazon also discloses that the engagement means (22 of Figs. 1-3 and 5) comprises a collar (22 of Figs. 1-3 and 5).

As to claim 39, Mazon discloses the tamper tool assembly of claim 1 as discussed above and Mazon also discloses that the collar (22 of Figs. 1-3 and 5) is axially movable (because of threads shown in Fig. 5) relative to the handle (38, 12).

Claim 40 is rejected under 35 U.S.C. 102(b) as being anticipated by Belanger.

As to claim 40, Belanger discloses a tamper tool assembly (Fig. 2) having a pivoting handle assembly (226), the tamper tool assembly comprising:

- an elongated handle (226) having a collar (242) attached to a distal end;
- a tamping base (212) having an upper surface and a lower surface; and
- a housing member (220) disposed on the upper surface of the tamping base (212), wherein the housing member (220) includes at least two clamping surfaces (a, b) formed 90 degrees apart, the at least two clamping surfaces (a, b) each matable with the collar (220) to retain the handle (226) in a first or second position relative to the base (212); and
- a washer assembly (246) disposed between the collar (242) and the at least two clamping surfaces (a, b).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7, 18, 19, 21, 22, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mazon.

As to claim 7, Mazon discloses the tamper tool assembly of claim 1 as discussed above, but Mazon fails to disclose that the lower surface of the tamping base comprises a planar four-sided surface. However, it is well recognized that a claimed configuration or shape is a matter of design choice which one of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration or shape of the claimed subject matter was significant (see *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966)). Therefore, since applicant has shown no criticality as to why the tamping base must be a planar four-sided figure, the examiner deems the recitation of the tamping base comprising a planar four-sided surface to be obvious in view of the tamping base (32) of Mazon.

As to claim 18, Mazon discloses a tamper tool assembly having a pivoting handle assembly (38, 12); the tamper tool assembly comprising:

- an elongated handle (38, 12) having a collar (22 of Figs. 1-3 and 5) threadably attached (see Fig. 5) to a distal end;

- a tamping base (32) having an upper surface and a four-sided, planar lower surface; and

- a housing member (22 of Fig. 6) disposed on the upper surface of the tamping base (32), wherein the housing member (22 of Fig. 6) includes at least two clamping surfaces (top and right surfaces of 22 in Fig. 6) formed 90 degrees apart, the at least

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two clamping surfaces each matable with the collar (22 of Figs. 1-3 and 5) to retain the handle (38, 12) in a first or second position relative to the base (32).

Mazon fails to disclose that the lower surface of the tamping base comprises a planar four-sided surface. However, it is well recognized that a claimed configuration or shape is a matter of design choice which one of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration or shape of the claimed subject matter was significant (see *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966)). Therefore, since applicant has shown no criticality as to why the tamping base must be a planar four-sided figure, the examiner deems the recitation of the tamping base comprising a planar four-sided surface to be obvious in view of the tamping base (32) of Mazon.

As to claim 19, Mazon discloses the tamper tool assembly of claim 18 as discussed above and Mazon also discloses that the handle (38, 12) can pivot (see Figs. 2 and 3) between a first position and a second position.

As to claim 21, Mazon discloses the tamper tool assembly of claim 18 as discussed above and Mazon also discloses that the housing member (22 of Fig. 6) is disposed substantially in the center of the tamping base (32). The housing member (22 of Fig. 6) is positioned along the centerline of the upper end (28) of the tamping base (34) and thus, it can be interpreted to be "in the center of the tamping base" as broadly recited.

As to claim 22, Mazon discloses the tamper tool assembly of claim 1 as discussed above and Mazon also discloses a joint (see Fig. 4) having a pivot bolt

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disposed through the housing member (22 of Fig. 6) and the distal end of the handle (38, 12).

As to claim 29, Mazon discloses the tamper tool assembly of claim 25 as discussed above, but Mazon fails to explicitly disclose that the collar (22 of Figs. 1-3 and 5) is disposed adjacent to the plurality of clamping surfaces. It would have been obvious to one of ordinary skill in the art at the time the invention was made to position the top surface of the housing (22 of Fig. 6) adjacent the collar (22 of Figs. 1-3 and 5) because the left and right surfaces of the housing (22 of Fig. 6) are positioned against the collar (22 of Figs. 1-3 and 5) as shown in Figs. 2 and 3, and because Mazon discloses that his tool is positionable in at least a third position.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mazon as applied to claims 1-3 above, and further in view of Belanger.

As to claim 4, Mazon discloses the tamper tool assembly of claims 1-3 as discussed above, but Mazon fails to explicitly disclose that the operational position comprises the longitudinal axis of the handle (38, 12) being oriented substantially perpendicular to the lower surface of the tamping base (32).

Belanger discloses a multi-purpose camping tool (see Fig. 2) which is fully capable of use as a tamping tool, wherein one operational position comprises the longitudinal axis of the handle (226) being oriented substantially perpendicular to the lower surface of the tamping base (212).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to position Mazon in an operational position wherein the longitudinal axis of the handle was oriented substantially perpendicular to the lower surface of the tamping base as taught by Belanger in order to provide a relatively flat surface for compaction of soil during camping to make a place in which a tent may be set up.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mazon as applied to claim 1 above, and further in view of Belanger.

As to claim 14, Mazon discloses the tamper tool of claim 1 as discussed above, but Mazon fails to disclose that the tamping base (32) comprises a plurality of reinforcement members.

Belanger discloses that the tamping base (214) has a plurality of reinforcement members (the flanges perpendicular to base (214) at an end thereof). The reinforcements have been broadly claimed and therefore the flanges meet this recitation.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the reinforcement members of Belanger onto the tamping tool of Mazon in order to strengthen the base against buckling or bending forces.

Claims 20 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mazon as applied to claims 18 and 19 above, and further in view of Belanger.

As to claim 20, Mazon discloses the tamping tool of claims 18 and 19 as discussed above, but Mazon fails to explicitly disclose that the first position comprises an operational position, wherein the longitudinal axis of the handle is oriented substantially perpendicular to the lower surface of the tamping base.

Belanger discloses a multi-purpose camping tool (see Fig. 2) which is fully capable of use as a tamping tool, wherein one operational position comprises the longitudinal axis of the handle (226) being oriented substantially perpendicular to the lower surface of the tamping base (212).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to position Mazon in an operational position wherein the longitudinal axis of the handle was oriented substantially perpendicular to the lower surface of the tamping base as taught by Belanger in order to provide a flat surface for compaction of soil during camping to make a place in which a tent may be set up.

As to claim 24, Mazon discloses the tamper tool assembly of claim 18 as discussed above, but Mazon fails to explicitly disclose that a washer assembly is disposed between the collar and the at least two clamping surfaces.

Belanger discloses a washer assembly (246 and smaller diameter washer adjacent thereto as seen in Figs. 9 and 10(a)-10(c)) disposed between the collar (242) and the at least two clamping surfaces (surface b shown in Fig. 2 and surface a best seen in Fig. 1).

It would have been obvious to one of ordinary skill in the art to include the washer assembly of Belanger into the tamping tool assembly of Mazon in order to provide a better seating surface for the collar against the clamping surfaces.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mazon as applied to claims 25 and 26 above, and further in view of Belanger.

As to claim 27, Mazon discloses the tamper tool assembly of claim 26 as discussed above, but Mazon fails to explicitly disclose that the operational position comprises the longitudinal axis of the handle being oriented substantially perpendicular to the lower surface of the tamping base.

Belanger discloses a multi-purpose camping tool (see Fig. 2) which is fully capable of use as a tamping tool, wherein one operational position comprises the longitudinal axis of the handle (226) being oriented substantially perpendicular to the lower surface of the tamping base (212).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to position Mazon in an operational position wherein the longitudinal axis of the handle was oriented substantially perpendicular to the lower surface of the tamping base as taught by Belanger in order to provide a flat surface for compaction of soil during camping to make a place in which a tent may be set up.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mazon as applied to claims 25 and 29 above, and further in view of Belanger.

As to claim 30, Mazon discloses the tamper tool assembly of claim 29 as discussed above, but Mazon fails to explicitly disclose a washer assembly is disposed between the collar and the clamping surfaces.

Belanger discloses a washer assembly (246 and smaller diameter washer adjacent thereto as seen in Figs. 9 and 10(a)-10(c)) disposed between the collar (242) and the at least two clamping surfaces (surface b shown in Fig. 2 and surface a best seen in Fig. 1).

It would have been obvious to one of ordinary skill in the art to include the washer assembly of Belanger into the tamping tool assembly of Mazon in order to provide a better seating surface for the collar against the clamping surfaces.

Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mazon in view of Belanger.

As to claim 40, Mazon discloses a tamper tool assembly having a pivoting handle assembly (38, 12), the tamper tool assembly comprising:

- an elongated handle (38, 12) having a collar (22 of Figs. 1-3 and 5) attached to a distal end;

- a tamping base (32) having an upper surface and a lower surface; and

- a housing member (22 of Fig. 6) disposed on the upper surface of the tamping base (32), wherein the housing member (22 of Fig. 6) includes at least two clamping surfaces formed 90 degrees apart, the at least two clamping surfaces each matable with

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the collar (22 of Figs. 1-3 and 5) to retain the handle (38, 12) in a first or second position relative to the base 32.

Mazon fails to disclose a washer assembly disposed between the collar (22 of Figs. 1-3 and 5) and the at least two clamping surfaces (top and right surfaces of 22 in Fig. 6).

Belanger discloses a washer assembly (246 and smaller diameter washer adjacent thereto as seen in Figs. 9 and 10(a)-10(c)) disposed between the collar (242) and the at least two clamping surfaces (surface b shown in Fig. 2 and surface a best seen in Fig. 1).

It would have been obvious to one of ordinary skill in the art to include the washer assembly of Belanger into the tamping tool assembly of Mazon in order to provide a better seating surface for the collar against the clamping surfaces.

Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mazon as applied to claims 1-3 above, and further in view of Martell.

As to claim 15, Mazon discloses the tamper tool of claim 1 as discussed above and Mazon also discloses that the handle comprises a two-part construction having an upper member (38) and a lower member (12). However, Mazon fails to explicitly disclose that each of the upper member and lower member of the handle are manufactured from a different material.

Martell discloses a tamper tool (10) having handle (50, 30) that comprises a two part construction having an upper member (50) and a lower member (30) which are

manufacture of different material, the upper member (50) being made of wood (col. 3, line 7 and 54) and the lower member (30) being made of metal (cross-hatching shown in Fig. 2) or reinforced molded materials or the like (see col. 4, lines 18-20).

It would have been obvious to one of ordinary skill in the art to make the two-part handle of Mazon from different materials as taught by Martell in order to provide for a strong (i.e., metal), yet lightweight (i.e., wood) handle construction.

With respect to claim 16 and as nearly as can be understood despite the 35 U.S.C. § 112, second paragraph indefiniteness, Mazon discloses the tamping tool of claim 15 as discussed above and Mazon also discloses that the first member (12) is disposed adjacent the housing member (34) and comprises a threaded portion (see Fig. 5).

With respect to claim 17 and as nearly as can be understood despite the 35 U.S.C. § 112, second paragraph indefiniteness, Mazon discloses the tamping tool of claim 16 as discussed above, but fails to explicitly disclose that the first member is manufactured from aluminum or steel, and the second member is manufactured from wood, fiberglass, or metal.

Martell discloses that the handle (50, 32) has a first member (32) which is manufactured from metal (see metal cross-hatching in cross-section view shown in Fig. 2) or reinforced molded materials or the like (see col. 4, lines 18-20) and a second member (50) which is wood (col. 3, line 7 and 54). Although Martell does not explicitly state that its handle support 30 is steel or aluminum, Official Notice is taken of the fact that steel and aluminum are materials frequently used in tool construction as one of the

materials in two-part handles and therefore, it would have been obvious for one of ordinary skill in the art to manufacture the first member of his two-part construction handle of steel or aluminum in view of the two-part handle construction of Martell which uses a metal for one of the two parts.

Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over Belanger as applied to claim 40 above, and further in view of Malcolm.

As to claim 41, Belanger discloses the tamper tool assembly of claim 40 as discussed above, but Belanger fails to disclose that the washer assembly comprises a washer constructed of a material having a low coefficient of friction and is disposed between two steel washers.

Malcolm (see col. 9, line 67 to col. 10, line 3) discloses that the "interface of Teflon and stainless steel washers 104 and 102 respectively provide the low friction necessary to avoid interference with the rotation of the nozzle head and the body."

It would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the washer assembly (246) of Belanger with the Teflon and stainless steel washers of Malcolm in order to provide low friction between pivoting parts.

Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Belanger in view of any one of Sprague, Fonti, Billington, Kenney, Jr., and Faass et al.

As to claim 42, Belanger discloses a tamper assembly (Fig. 2) having a pivoting handle assembly (226), the tamper tool assembly (Fig. 2) comprising:

- an elongated handle (226) having a collar (242) attached to a distal end;
- a tamping base (212) having an upper surface and a lower surface; and
- a housing member (220) disposed on the upper surface of the tamping base (212), wherein the housing member (220) includes at least two clamping surfaces (a, b) formed 90 degrees apart (see Figs. 2, 10(a), and 10(b)) the at least two clamping surfaces each matable with the collar (242) to retain the handle (226) in a first or second position relative to the base (212).

Bellanger fails to disclose a roller thrust bearing is disposed between the collar and the at least two clamping surfaces.

Roller thrust bearings are old and well known in the art for minimizing frictional forces in rotating members as is illustrated by any one of the following references. Sprague discloses a soil compaction apparatus having a roller thrust bearing assembly (40, Fig. 5). Fonti discloses a roller thrust bearing (65, Figs. 7 and 8). Billington discloses a roller thrust bearing (46, Fig. 1). Kenney, Jr. discloses a roller thrust bearing (100, Fig. 1) between a rotating member (R) and a stationary member (S). Faass et al. disclose rollers (72) of the roller thrust bearing assembly (62) between first and second thrust washers (68, 70).

Since applicants specify absolutely no structural details as to what his roller thrust bearing looks like or consists of, the examiner deems any one of the roller thrust

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bearings taught by Sprague, Fonti, Billington, Kenney, Jr., and Faass et al. to meet the broad claim language.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the stepped collar (246) of Belanger with the roller thrust bearing (46) of any one of Sprague, Fonti, Billington, Kenney, Jr., and Faass et al. because roller thrust bearings are old and well known in the art for minimizing frictional forces in rotating members.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 5,105,493 to Lugtenaar discloses a tool capable of use as a tamper, but the clamping surfaces (see Fig. 5) are not quite 90 degrees apart. U.S. Patent No. 6,131,967 discloses a tool capable of use as a tamper (see Fig. 5). U.S. Patent No. 6,289,540 to Edmonds discloses a tool capable of use as a tamper (see Fig. 10).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gay Ann Spahn whose telephone number is (571)-272-7731. The examiner can normally be reached on Monday through Thursday, 8:30 am to 7:00 pm.

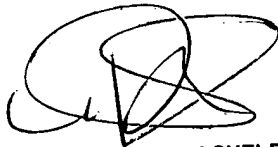
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford can be reached on (571)-272-7049. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

^{GAS}
Gay Ann Spahn, Patent Examiner
April 14, 2005



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